IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7376 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R J VYAS

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR PRABHAKAR UPADHYAY for MR MUKESH H RATHOD for Petitioner

MS MAYA DESAI for MR MD PANDYA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 09/03/2001

ORAL JUDGEMENT

1. The petitioner challenges the order dated 19/7/1988 of the Industrial Tribunal, Ahmedabad in Reference (IT) No. 456 of 1979 rejecting the Reference, under which the petitioner claimed the benefit of two higher grades and the difference on that basis.

2. The petitioner was originally working as a Driver at Modasa Power House. But since the power house was closed, he was by order dated 30/9/1965 at Annexure-A to

the petition, redesignated as Lineman/wireman in his existing pay-scale of Rs.60-150, which he was getting as a Driver and that pay-scale was ordered to be considered as personal pay-scale to him. This is because the pay-scale of Lineman/Wireman was lower than pay-scale of Driver. It appears from the appendix to the General Standing Order No. 56 dated 9/4/1962 at Annexure-D to the petition, that the pay-scale of Lineman/Wireman was Rs.55-3-85, which was revised to Rs.55-3-70-5-100. According to the petitioner workman he should get pay-scale of Rs.80-105 on completion of 4 years of service as per General Standing Order No. 43 and grade of Rs.100-340 on further completion of 3 years of service. He completed 4 years of service on 30/9/1969 and further 3 years on 30/9/1972. It was also the case of the Union that the petitioner was not called for an interview and not promoted as Line Inspector while his juniors were promoted.

3. The Gujarat Electricity Board contested the Reference on the ground that the petitioner was working as a Lineman and G.S.O. No. 43 was not applicable to Lineman. It was also contended that the petitioner was not entitled to promotion merely on the basis of seniority. It was stated that petitioner was already given benefit of higher grade under G.S.O. No. 247 on completion of 9 years' service.

4. The Tribunal on the basis of the material on record, came to a finding that the petitioner could not have claimed promotion as a matter of right and that there was no case of unfair labour practice or victimization made out by the petitioner. It was held that merely because his juniors came to be promoted it cannot be said that he was not promoted even though he had merit. The petitioner was only entitled to be considered by the management for promotion which according to the Tribunal must have been done, as nothing contrary was established.

5. As regards the claim of the petitioner of getting benefit of G.S.O. No. 43 the Tribunal came to a finding that it was not applicable to the petitioner.

6. Promotion could not have been claimed as a matter of right by the petitioner. It is no-body's case that the petitioner was not considered for promotion for the post of Line Inspector. The Tribunal rightly held that no unfair labour practice was shown to have been followed in the matter of giving promotions to the persons who were junior to the petitioner. If on consideration

juniors were selected and the petitioner was not, it cannot be said that the Board caused any injustice to the petitioner or acted arbitrarily.

7. The benefit of G.S.O. No. 43 that the petitioner has claimed, takes us to the contents of that G.S.O., a copy of which is at Annexure-C to the petition. As per this order employees working in the grade of Rs.60-120 prescribed for Assistant Operator, Sub-Engineers. Line Inspectors, Mechanics, etc. were held eligible for the higher grade of Rs.80-8-160 in case they have completed 4 years of service in the existing scale in the organisation and acquired good reports during the preceding 3 years irrespective of the fact whether they have passed Matriculation or S.S.C. Examination or not. It is clear from the preamble and the contents of this order that the benefit was intended to be given to Assistant Operators/Sub-Engineers/Line Inspectors/Mechanics. The expression "etc." at the end of this enumeration cannot include posts which are lower to these posts and it has to be read ejusdim genesis with the previous enumeration. As noted above, the post of Lineman carried pay scale of Rs.55-3-85, which was later on revised to Rs.55-100. From the Appendix to the G.S.O. No. 56 dated 9/4/1962, Annexure-D to the petition, it is clear that the pay-scale of Rs.60-120 which is revised to Rs.60-150 was prescribed for the posts which are enumerated at serial nos. 34 to 46. The fact that the pay that the petitioner was drawing as a Driver (Rs.60-150) was protected as his personal pay, when he was redesignated as Lineman, because of the closure of his unit which would have otherwise entailed termination of service, will not entitle the petitioner while working as a Lineman to get the benefit of the G.S.O. 43 which was intended to apply to the posts which were in the higher scale and which were enumerated in the G.S.O. Admittedly the petitioner was not a Line Inspector and, therefore, he did not fall within the ambit of G.S.O. 43. Therefore, on plain reading of the G.S.O. 43 it appears that the Tribunal was fully justified in holding that he was not entitled to its benefit. The Tribunal has given one more cogent reason for coming to the same conclusion and that is on the basis of the circular exh. 25 in which the aspect of implementation of G.S.O. 43 was dealt with. It was clarified by that circular that the benefit of G.S.O. 43 was applicable only where the number of posts were not sanctioned according to the scale or grade, but one post carried two or more grades i.e. lower and higher. The benefit of G.S.O. 43 was not available for the posts where different scales were prescribed and number of posts were also sanctioned.

These have been enumerated by way of illustration in the said clarification and an employee working in the lower time scale was not eligible to the benefit of G.S.O.43 on the lines of Line Inspector, S.B.O. A.O. as stated in the clarification. The Tribunal, therefore, was fully justified in holding that the petitioner was not entitled to the benefit of G.S.O. 43. The benefit of G.S.O. 247 was already given to the petitioner. The Tribunal has already observed that if the benefit of G.S.O. 247 was not given on completion of 9 years of service to the petitioner on 30/9/1974 in the old scale, it should be given.

8. The Tribunal has acted in lawful exercise of its jurisdiction in making the award by rejecting the Reference and there is absolutely no warrant for any interference with the impugned award under Article 227 of the Constitution, which has been invoked in this petition. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

[R.K. ABICHANDANI, J.]

* Pansala.